

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2746

Introduced by Assembly Member Blakeslee

February 19, 2010

An act to amend Section ~~42920~~ 10089.7 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2746, as amended, Blakeslee. ~~Insurance Commissioner: powers and duties.~~ *California Earthquake Authority: mitigation officer.*

Existing law provides for the California Earthquake Authority (CEA) governed by a 3-member governing board consisting of the Governor, the Treasurer, and the Insurance Commissioner. The Speaker of the Assembly and the Chairperson of the Senate Committee on Rules serve as nonvoting, ex officio members of the board. The CEA is vested with certain powers and duties, including but not limited to, the authorization to contract for services of a chief executive officer, a chief financial officer, and an operations manager.

This bill would authorize the CEA to contract for the services of a chief mitigation officer. The board would be required to establish the duties of, and give direction to, the chief mitigation officer to support and enhance the CEA's efforts to create and maintain specified mitigation activities. The bill would also authorize the CEA to accept grants and gifts of property and services for the Earthquake Loss Mitigation Fund or the related residential retrofit program from federal, state, and local government sources and private sources.

~~Existing law requires the Insurance Commissioner to determine the sufficiency and validity of all securities required to be given by persons~~

~~engaged, or to be engaged, in the insurance business and cause the security to be supplemented or renewed in case of insufficiency or invalidity of the security.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10089.7 of the Insurance Code is amended
2 to read:

3 10089.7. (a) The authority shall be governed by a
4 three-member governing board consisting of the Governor, the
5 Treasurer, and the Insurance Commissioner, each of whom may
6 name designees to serve as board members in their place. The
7 Speaker of the Assembly and the Chairperson of the Senate ~~Rules~~
8 Committee *on Rules* shall serve as nonvoting, ex officio members
9 of the board, and may name designees to serve in their place.

10 (b) The board shall be advised by an advisory panel whose
11 members shall be appointed by the Governor, except as provided
12 in this subdivision. The advisory panel shall consist of four
13 members who represent insurance companies that are licensed to
14 transact fire insurance in the state, two of whom shall be appointed
15 by the commissioner, two licensed insurance agents, one of whom
16 shall be appointed by the commissioner and three members of the
17 public not connected with the insurance industry, at least one of
18 whom shall be a consumer representative. In addition, the Speaker
19 of the Assembly, and the Chairperson of the Senate ~~Rules~~
20 Committee *on Rules* may each appoint one member of the public
21 not connected with the insurance industry. Panel members shall
22 serve for four-year terms, which may be staggered for
23 administrative convenience, and panel members may be
24 reappointed. The commissioner shall be a nonvoting, ex officio
25 member of the panel and shall be entitled to attend all panel
26 meetings, either in person or by representative.

27 (c) The board shall have the power to conduct the affairs of the
28 authority and may perform all acts necessary or convenient in the
29 exercise of that power. Without limitation, the board may: (1)
30 employ or contract with officers and employees to administer the

1 authority; (2) retain outside actuarial, geological, and other
2 professionals; (3) enter into other obligations relating to the
3 operation of the authority; (4) invest the moneys in the California
4 Earthquake Authority Fund; (5) obtain reinsurance and financing
5 for the authority as authorized by this chapter; (6) contract with
6 participating insurers to service the policies of basic residential
7 earthquake insurance issued by the authority; (7) issue bonds
8 payable from and secured by a pledge of the authority of all or any
9 part of the revenues of the authority to finance the activities
10 authorized by this chapter and sell those bonds at public or private
11 sale in the form and on those terms and conditions as the Treasurer
12 shall approve; (8) pledge all or any part of the revenues of the
13 authority to secure bonds and any repayment or reimbursement
14 obligations of the authority to any provider of insurance or a
15 guarantee of liquidity or credit facility entered into to provide for
16 the payment of debt service on any bond of the authority; (9)
17 employ and compensate bond counsel, financial consultants, and
18 other advisers determined necessary by the Treasurer in connection
19 with the issuance and sale of any bonds; (10) issue or obtain from
20 any department or agency of the United States or of this state, or
21 any private company, any insurance or guarantee of liquidity or
22 credit facility determined to be appropriate by the Treasurer to
23 provide for the payment of debt service on any bond of the
24 authority; (11) engage the commissioner to collect revenues of the
25 authority; (12) issue bonds to refund or purchase or otherwise
26 acquire bonds on terms and conditions as the Treasurer shall
27 approve; and (13) perform all acts that relate to the function and
28 purpose of the authority, whether or not specifically designated in
29 this chapter.

30 (d) The authority shall reimburse board and panel members for
31 their reasonable expenses incurred in attending meetings and
32 conducting the business of the authority.

33 (e) (1) There shall be a limited civil immunity and no criminal
34 liability in a private capacity, on account of any act performed or
35 omitted or obligation entered into an official capacity, when done
36 or omitted in good faith and without intent to defraud, on the part
37 of the board, the panel, or any member of either, or on the part of
38 any officer, employee, or agent of the authority. This provision
39 shall not eliminate or reduce the responsibility of the authority
40 under the covenant of good faith and fair dealing.

(2) In any claim against the authority based upon an earthquake policy issued by the authority, the authority shall be liable for any damages, including damages under Section 3294 of the Civil Code, for a breach of the covenant of good faith and fair dealing by the authority or its agents.

(3) In any claim based upon an earthquake policy issued by the authority, the participating carrier shall be liable for any damages for a breach of a common law, regulatory or statutory duty as if it were a contracting insurer. The authority shall indemnify the participating carrier from any liability resulting from the authority's actions or directives. The board shall not indemnify a participating carrier for any loss resulting from failure to comply with directives of the authority or from violating statutory, regulatory, or common law governing claims handling practices.

(4) No licensed insurer, its officers, directors, employees, or agents, shall have any antitrust civil or criminal liability under the Cartwright Act (Part 2 (commencing with Section 16600) of Division 7 of the Business and Professions Code) by reason of its activities conducted in compliance with this chapter. Further, the California Earthquake Authority shall be deemed a joint arrangement established by statute to ensure the availability of insurance pursuant to subdivision (b) of Section 1861.03.

(5) Subject to the provisions of Section 10089.21, nothing in this chapter shall be construed to limit any exercise of the commissioner's power, including enforcement and disciplinary actions, or the imposition of fines and orders to ensure compliance with this chapter, the rules and guidelines of the authority, or any other law or rule applicable to the business of insurance.

(6) Except as provided in paragraph (3) and by any other provision of this chapter, there shall be no liability on the part of, and no cause of action shall be permitted in law or equity against, any participating insurer for any earthquake loss to property for which the authority has issued a policy unless the loss is covered by an insurance policy issued by the participating insurer. A policy issued by the authority shall not be deemed to be a policy issued by a participating insurer.

(f) The Attorney General, in his or her discretion, shall provide a representative of his or her office to attend and act as antitrust counsel at all meetings of the panel. The Attorney General shall

1 be compensated for legal service rendered in the manner specified
2 in Section 11044 of the Government Code.

3 (g) The authority may sue or be sued and may employ or
4 contract with that staff and those professionals the board deems
5 necessary for its efficient administration.

6 (h) (1) The authority may contract for the services of a chief
7 executive officer, a chief financial officer, *a chief mitigation officer*,
8 and an operations manager, and may contract for the services of
9 reinsurance intermediaries, financial market underwriters, modeling
10 firms, a computer firm, an actuary, an insurance claims consultant,
11 counsel, and private money managers. These contracts shall not
12 be subject to otherwise applicable provisions of the Government
13 Code and the Public Contract Code, and for those purposes, the
14 authority shall not be considered a state agency or other public
15 entity. Other employees of the authority shall be subject to civil
16 service provisions. The total number of authority employees subject
17 to civil service provisions shall not exceed 25.

18 (2) When the authority hires multiple private money managers
19 to manage the assets of the California Earthquake Authority Fund,
20 other than the primary custodian of the securities, the authority
21 shall consider small California-based firms who are qualified to
22 manage the money in the fund. The purpose of this provision is to
23 prevent the exclusion of small qualified investment firms solely
24 because of their size.

25 (i) Members of the board and panel, and their designees, and
26 the chief executive officer, the chief financial officer, and the
27 operations manager of the authority shall be required to file
28 financial disclosure statements with the Fair Political Practices
29 Commission. The appointing authorities for members and designees
30 of the board and panel shall, when making appointments, avoid
31 appointing persons with conflicts of interest. Section 87406 of the
32 Government Code, the Milton Marks Postgovernment Employment
33 Restrictions Act of 1990, shall apply to the authority. Members of
34 the board, the chief financial officer, the chief executive officer,
35 the chief operations manager, the chief counsel, and any other
36 person designated by the authority shall be deemed to be designated
37 employees for the purpose of that act. In addition, no member of
38 the board, nor the chief financial officer, the chief executive officer,
39 the chief operations manager, and the chief counsel, shall, upon
40 leaving the employment of the authority, seek, accept, or enter

1 into employment or a consulting or other contractual arrangement
2 for the period of one year with any employer or entity that entered
3 into a participating agreement, or a reinsurance, bonding, letter of
4 credit, or private capital markets contract with the authority during
5 the time the employee was employed by the authority, which that
6 member or employee had negotiated or approved, or participated
7 in negotiating. A violation of these provisions shall be subject to
8 enforcement pursuant to Chapter 11 (commencing with Section
9 91000) of Title 9 of the Government Code.

10 (j) *The board shall establish the duties of, and give direction*
11 *to, the chief mitigation officer, to support and enhance the*
12 *authority's appropriate efforts to create and maintain all of the*
13 *following:*

14 (1) *Program activities that mitigate against seismic risks, for*
15 *the benefit of homeowners, other property owners, including*
16 *landlords with smaller holdings, and the general public of the*
17 *state.*

18 (2) *Collaboration with academic institutions, nonprofit entities,*
19 *and commercial business entities in joint efforts to conduct*
20 *mitigation-related research and educational activities, and conduct*
21 *program activities to mitigate against seismic risk.*

22 (3) *Programs to provide financial assistance in the form of*
23 *loans, grants, credits, rebates, or other financial incentives to*
24 *further efforts to mitigate against seismic risk, including, but not*
25 *limited to, structural and contents retrofitting of residential*
26 *structures.*

27 (4) *Collaborations and joint programs with subdivisions and*
28 *programs of local, state, and federal governments and with other*
29 *national programs that may further California's disaster*
30 *preparedness, protection, and mitigation goals.*

31 (5) *Other programs, support efforts, and activities deemed*
32 *appropriate by the board to further the authority's appropriate*
33 *mitigation and mitigation related goals.*

34 (k) *The authority may accept grants and gifts of property, real*
35 *or personal, tangible and intangible, and services for the*
36 *Earthquake Loss Mitigation Fund, created pursuant to Section*
37 *10089.37, or the related residential retrofit program from federal,*
38 *state, and local government sources and private sources.*

39 (j)

1 (l) The Bagley-Keene Open Meeting Act (Article 9
2 (commencing with Section 11120) of Chapter 1 of Part 1 of
3 Division 3 of Title 2 of the Government Code) applies to meetings
4 of the board and the panel.

5 SECTION 1. Section 12920 of the Insurance Code is amended
6 to read:

7 ~~12920. The commissioner shall determine the sufficiency and~~
8 ~~validity of all securities required to be given by persons engaged,~~
9 ~~or to be engaged, in the insurance business, and shall cause that~~
10 ~~security to be supplemented or renewed in case of the insufficiency~~
11 ~~or invalidity of the security.~~